IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO.1336 OF 2005

Anup Kumar H. Valecha — Petitioner

Vs.

State of Maharashtra & anr. — Respondents

WITH

CRIMINAL WRIT PETITION NO.1762 OF 2005

Suresh Kumar Sukhadevbhai Belani — Petitioner

Vs.

State of Maharashtra & anr. — Respondents

Mr.S.V.Marwadi with Ms.Divya Trivedi for petitioners in both the petitions.

Mr.A.M.Shringarpure, APP for State in both the petitions.

Ms.Rohini Wagh for resp.no.2 in both the petitions.

CORAM: S.S.PARKAR & ANOOP V.MOHTA,JJ.

August 25, 2005.

ORAL ORDER:

1. Petitioners in both the petitions have challenged the order of the Magistrate passed under Section 156(3) of Cr.P.C. which arises under the following circumstances.

2. The complaint has been filed by the Respondent No.2 in the Magistrate's Court for offences under Sections 406, 408, 420, 467, 468 and 471 read with Section 120-B of IPC. The allegation is that the said offences were committed during the period between 1st November 2004 and 30th November 2004. The learned Magistrate referred the matter for investigation to the police under Section 156(3) of Cr.P.C. Therefore, the Sion Police Station registered the offence on 27th December 2004 under MECR No.3/2004. The petitions have been filed challenging the complaint and the FIR recorded by the police, inter alia, on the ground that the transaction had taken place outside India between the parties who are in Hongkong and Dubai. The complainant is not even either the consignor or consignee but is only, according to the petitioners, a commission agent. The only allegation made to bring the case within the jurisdiction of Bombay police is that a sum of Rs.20,000/- was paid by the complainant to accused no.2 who is carrying on business in Hongkong. The goods were sent from Hongkong to Dubai. The goods have been supplied accordingly from Hongkong to Dubai and payment has

been made by the consignee and commission has been paid to the complainant. The petitioners during the course of pendency of the petitions never objected to the investigation being carried out as per the directions given by the order of the learned Magistrate by referring the matter under Section 156(3) of Cr.P.C. Naturally their worry was that they would be unnecessarily arrested. They had previously reported to the police for the purpose of interrogation and they were interrogated by the concerned police on 23rd and 24th August 2005 as per the previous direction of this Court dated 19th August 2005. The petitioners' counsel wants to file an affidavit pointing out as to what transpired during the course of the interrogation of the petitioners at the police station. Grievance is also made that the complainant was present at the time of interrogation of the petitioners.

3. On behalf of the respondents-State Mr.Shringarpure states that the police will interrogate and record the statements of all the concerned and submit the report to the Magistrate without arresting any of the petitioners- accused and will abide and comply with the directions that may be

issued by the learned Magistrate after submission of the report to the Magistrate on the investigation made by them.

4. In view of the aforesaid statement Mr.Marwadi does not press these petitions. Accordingly the petitions shall stand disposed of as not pressed. The contentions raised on behalf of the petitioners in these petitions on merits of the allegations made against them are kept open.

(S.S.PARKAR,J.)

(ANOOP V.MOHTA,J.)